

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE:   Town of Bristol**

**FILE NOs.: Dam State I.D. 409 and  
OCI-DAMS-13-75**

NOTICE OF VIOLATION

A.    Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B.    Facts

- (1)    The property is a dam identified as State Street Pond Dam, State Identification Number 409, located approximately 2,120 feet west of Metacom Avenue and State Street, approximately 150 feet south of State Street, in the town of Bristol, Rhode Island (“Dam 409”).
- (2)    The Respondent owns Dam 409.
- (3)    Dam 409 is classified by the DEM as Significant Hazard.
- (4)    On 21 April 2009, the DEM issued a certified letter to the Respondent that included a registration form for Dam 409. The letter was delivered on 23 April 2009. The Respondent was required to complete and return the form to the DEM by 7 May 2009.
- (5)    On 18 September 2013, Dam 409 was inspected. The inspection revealed vegetation on the upstream side and downstream side of the embankment and the primary spillway that did not allow a proper inspection to be performed. The inspector was unable to determine whether the low level outlet is operable.
- (6)    The DEM considers Dam 409 unsafe because of vegetation that inhibits a proper inspection.
- (7)    As of the date of this Notice of Violation (“NOV”), the Respondent has not provided the registration form to the DEM.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM's Rules and Regulations for Dam Safety (the "Dam Safety Regulations"), Rule 4(A)** – requiring the owner of a significant hazard dam to maintain the dam in a safe condition.
- (2) **DEM's Dam Safety Regulations, Rule 8** – requiring the owner of a dam to provide a fully completed registration form to the DEM.
- (3) **DEM's Dam Safety Regulations, Rule 11(A)(2)** – requiring the owner of a significant hazard dam to perform a visual inspection of the dam whenever the DEM determines one is necessary.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 14 days of receipt of the NOV**, complete and submit to the DEM the enclosed registration form.
- (2) **Within 90 days of receipt of the NOV**, cut or remove the vegetation from the areas of Dam 409 as described in Paragraph B(5) above in accordance with the DEM's Dam Safety Regulations, Rule 10A. Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. The DEM shall be notified upon commencement and completion of this work.
- (3) **Within 90 days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, design, construction and repair (the "Dam Engineer").
- (4) **Within 180 days of receipt of the NOV**, the Dam Engineer must complete a visual inspection of Dam 409 in accordance with the DEM's Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to the DEM. The inspection must include an assessment of the operability of the low level outlet. The report must specify the actions (in addition to the actions ordered in the NOV) necessary to return the dam to a safe condition and include a schedule to complete the work. For any proposed repairs, the report must include an application prepared in accordance with the DEM's Dam Safety Regulations, Rule 10B.
- (5) The report, application, and/or schedule required above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. **Within 14 days (unless a longer time is specified) of**

**receiving a notification of deficiencies**, the Respondent shall submit to the DEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.

- (6) Commence work specified in the schedule approved by the DEM within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work at a later time), and complete such work in accordance with the approved schedule.

E. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations and/or orders set forth in Sections B through D above. All requests for hearing **MUST**:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
  - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each

violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, please have your attorney contact Joseph J. LoBianco at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7400.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

**CERTIFICATION**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Town of Bristol  
c/o Antonio A. Teixeira, Town Administrator  
10 Court Street  
Bristol, RI 02809-2208

by Certified Mail.

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